in the U.S. This disparity may result because each nation has unique market characteristics, including:

- The maturity of its wireline and wireless networks
- The use or lack of use of separate NXX blocks as a means of implicit notification
- The demand for particular types of services[71]

Finally, the attractiveness of CPP in other countries can also largely be attributed to the prevalence of measured service for local landline calling. Since customers in these countries are accustomed to paying usage charges for each call they place, CPP for CMRS would be the norm, not the exception.[72] This is not the case in the U.S., however, since flat-rate local service is generally the norm for residential customers, and local measured service is the exception. As a result, unlike in other countries, in the U.S. CPP creates a serious risk of causing consumer confusion and aggravation because of the need to pay usage charges for what would be perceived by the customer to be a local call. Whether or not the U.S. consumers natural reluctance to pay usage charges for local calls placed to CMRS customers will give way to recognition of the value of being able to call mobile customers only the competitive marketplace can properly determine.

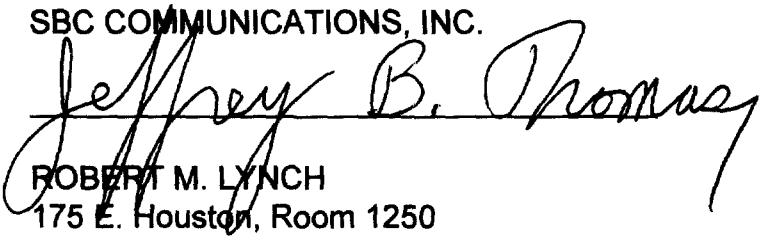
[71] BellSouth at 6.
[72] SBC Comments at 15.

VI. CONCLUSION

For all the above reasons, the Commission should not conduct a rulemaking proceeding on CPP. The Commission lacks the authority to regulate CPP or to require LEC billing and collection of CPP. The Commission should allow the marketplace to determine the value, and success or failure of, CPP.

Respectfully submitted,

SBC COMMUNICATIONS, INC.



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Date: January 16, 1998
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EXHIBIT A

SBC Communications Inc.
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November 14, 1997

The Honorable William E. Kennard, Chairman
Federal Communications Commission
1919 M Street, N.W.
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Washington, D.C. 20554

Dear Chairman Kennard:

Re: Reply To CTIA's Request For A Declaration That The FCC Has Exclusive Jurisdiction Over CMRS-LEC Interconnection

In a September 23, 1997 letter to Chairman Hundt, the Cellular Telecommunications Industry Association ("CTIA") requests a "declaration that the FCC has exclusive jurisdiction over CMRS-LEC interconnection."[1] CTIA also asks the Commission to declare "that, for wireless-wireline interconnection, the Commission will exercise the functions otherwise assigned to the States in any instances where negotiations fail."[2] CTIA's basis for its request that States be totally removed from the CMRS-LEC interconnection process is "the recent decision of the Eighth Circuit in *Iowa Utilities Board v. F.C.C.*," including the "court's interpretation of Section 332" of the Communications Act.[3] For the reasons discussed below, Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell oppose CTIA's request.

The Eighth Circuit's Opinion Bars Exclusive FCC Authority Over CMRS-LEC Interconnection

The assertion that the FCC has exclusive authority over CMRS-LEC interconnection is founded upon CTIA's speculation concerning the meaning of footnote 21 of the Court's Opinion.[4] What the Court actually said in footnote 21, however, differs from what CTIA asserts the Court "concluded," "observed," and "recognized."

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[1] CTIA, p. 1.
[2] *Id.*
[3] *Id.*, citing *Iowa Utilities Bd. v. F.C.C.*, 120 F.3d 753 (8th Cir., July 18,1997) ("*Eighth Circuit Interconnection Opinion*") and 47 U.S.C. § 332.
[4] CTIA at 3.

The footnote identifies the "FCC's pricing rules" that the Court vacated because of the FCC's lack of jurisdiction.[5] The Court stated, "The pricing rules refer to 47 C.F.R. §§ 51.501-51.515 (inclusive except for section 51.515(b)...), 51.601-51.611 (inclusive), 51.701-51.717 (inclusive)." From this large group of pricing rules, the Court then carved out express exceptions for specific sections and subsections that were not vacated in the CMRS context. The Court stated:

> Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by [CMRS] providers, *see* 47 U.S.C. §§ 152(b) (exempting the provisions of section 332), 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers, *i.e.*, 47 C.F.R. §§ 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717, but only as these provisions apply to CMRS providers.

The Court concluded that these specific sections or subsections "remain in full force and effect with respect to the CMRS providers, and our order of vacation does not apply to them in the CMRS context."

CTIA's whole argument is based on incorrect assertions of what the Court did in a footnote. CTIA states, "In its decision, the court vacated several provisions of the *Interconnection Order* on the grounds that the Commission had exceeded its jurisdiction in establishing pricing arrangements for wireline interconnection."[6] Actually, as shown above, the Court vacated most of the pricing provisions in their entirety, without distinguishing between wireline and wireless interconnection. In fact, other than in footnote 21, the Court did not mention CMRS or make any distinction between wireless and wireline in discussing the pricing rules or the structure or meaning of §§ 251 and 252, but spoke generally of carrier interconnection under §§ 251 and 252. The Court found that "the states have the exclusive authority to establish the prices regarding the local competition provisions of the Act."[7] Concerning exceptions, the Court stated, "Congress could override Section 2(b)'s command only by unambiguously granting the FCC authority over intrastate telecommunications matters or by directly modifying Section 2(b)."[8]

In footnote 21, the Court identified the only statutory override concerning the pricing rules for CMRS. That override was limited to §§ 332(c)(3)(A) and 332(c)(1)(B) and

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[5] *Eighth Circuit Interconnection Opinion* at 800.
[6] CTIA at 2 (emphasis added).
[7] *Eighth Circuit Interconnection Opinion* at 796. *See also id.* at 799-800.
[8] *Id.* at 796.

resulted in the Court retaining only the specific FCC rules identified in footnote 21. Section 332(c)(3)(A) states, in pertinent part:

> Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services (emphasis added).

Section 332(c)(1)(B) states, in pertinent part:

> Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act (emphasis added).

Accordingly, based on these two subsections of Section 332, the Court retained only the Commission's rules establishing general requirements for transport and termination between LECs and CMRS providers, but not those rules establishing the specific prices, terms, and conditions for that transport and termination. Specifically, the Court retained only those rules that do not impinge on the State's authority over pricing and costing, namely:

- § 51.701, defining the scope of transport and termination pricing rules;
- § 51.703, requiring LECs to establish reciprocal compensation arrangements;
- § 51.709(b), requiring a rate structure (but not establishing the rates) for transport and termination that recovers the appropriate costs;
- § 51.711(a)(1), defining, but not requiring, symmetrical rates;[9]

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[9] In its September 30, 1997 *Public Notice*, the Commission included in error both § 51.711(a) and § 51.711(a)(1) in its *Summary Of Currently Effective Commission Rules For Interconnection Requests By Providers Of Commercial Mobile Radio Services. Public Notice*, 97-344, p. 3. CMRS providers had requested that the Court retain § 51.711(a) (see following footnote). The Court did not do so. Instead the Court retained § 51.711(a)(1). The precise selection of § 51.711(a)(1), which is set forth twice in footnote 21 and repeated in footnote 39, is purposeful. Section 51.711(a) requires symmetrical prices. Under this Rule, once the State had determined the rates that either the LEC or the CMRS provider would charge the other, the FCC's symmetrical pricing rule would automatically set the rates for the other provider. Retention of this rule thus would place the FCC in the position of establishing local interconnection rates, permitting it to exceed the limits of its jurisdiction. Instead, the Court retained only the definition of symmetrical rates in § 51.711(a)(1), so that if a State decides to require symmetrical rates there

- § 51.715(d), requiring State commissions to make adjustments to past compensation if interim rates for transport and termination differ from final rates established by the State commission;

- § 51.717, requiring renegotiation of existing non-reciprocal arrangements and the payment of reciprocal compensation based on the existing agreement until the State approves the renegotiated agreement.

With the exception of § 51.711(a)(1), the Court retained only those rules CTIA and other CMRS providers[10] had argued the Court should retain. CTIA acknowledged that "none of these provisions mandates particular prices or pricing methodologies."[11] CTIA did not ask the Court to retain explicit pricing and costing rules (§§ 51.705, 51.707, 51.709(a), 51.713) and related rules (exceptions to symmetrical rates, interim proxy rate agreements). By this omission, CTIA conceded that the FCC did not have jurisdiction to issue those rules. Reversing the position it took before the Court, CTIA now states that the "court concluded that since the Section 2(b) reservation of authority to the States does not apply, the Commission, not the States, has the ultimate authority to establish interconnection pricing rules between LECs and CMRS providers."[12]

CTIA's error concerning the Court's application of Section 2(b) is revealed most clearly in CTIA's speculation that "[o]f special significance is the court's recognition that the FCC has exclusive jurisdiction to regulate the rates in interconnection agreements between CMRS providers and LECs."[13] Contrary to CTIA's speculation, to preserve State authority, the Court vacated in their entirety all the FCC's interconnection pricing rules aimed specifically at the setting of rates. For instance, the Court entirely vacated § 51.705, concerning incumbent LECs' rates for transport and termination in reciprocal compensation agreements with all requesting carriers including CMRS providers.[14] Similarly, the Court entirely vacated § 51.707, concerning default proxies for incumbent

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will be a uniform definition of what that means. The State continues to retain its proper authority to set rates. The Court's decision is consistent with its finding that "the states have the exclusive authority to establish the prices regarding the local competition provisions of the Act." *Eighth Circuit Interconnection Opinion* at 796. If the Court had intended to retain the symmetrical pricing requirement, it would have made no sense not to also retain the exceptions to the symmetrical pricing requirement in §§ 51.711(b) and (c). Retaining § 51.711(a) without retaining the exceptions in (b) and (c) would leave the States with even less authority over interconnection rates than the FCC originally ordered, a result the Court could not have intended.

[10] CTIA was one of the parties intervening as "CMRS providers" before the Court. *See* Brief For Intervenors CMRS Providers In Support Of Respondents, December 23, 1996, *Iowa Utilities Board v. FCC* (No. 96-3321, Eighth Cir.). ("Brief for Intervenors")

[11] Brief for Intervenors at 16 (emphasis in the original). CMRS providers also requested § 51.51.711(a), but, as discussed in footnote 9 herein, that would have conflicted with the need to avoid federal mandating of particular prices.

[12] CTIA at 3.

[13] *Id.* at 1 (emphasis added).

[14] *Eighth Circuit Interconnection Opinion* at n. 21 (emphasis added).

LECs' transport and termination rates for reciprocal compensation agreements with all requesting carriers including CMRS providers.[15]

CTIA's request for a declaration of exclusive federal authority over this rate setting is inconsistent with and contrary to the Court's complete vacation on jurisdictional grounds of these federal rate setting rules for CMRS-LEC interconnection. CTIA attempts to obtain by its request what it already conceded to the Court was beyond the FCC's jurisdiction.

Section 332 Does Not Provide The FCC With Any Jurisdiction Over Rates For CMRS-LEC Interconnection

CTIA uses its unsupported assertions concerning the meaning of footnote 21 to support its incorrect interpretation of Section 332 of the Communications Act. CTIA states:

> Through its determination that the Commission has exclusive jurisdiction to regulate the rates for CMRS transport and termination, the court has clarified the meaning of 'rates' in Section 332. Under the court's reasoning, the term 'rates' is not limited to the prices that CMRS providers charge their retail subscribers. Rather, by upholding the Commission's requirements for CMRS-LEC transport and termination, the court concludes that Congress' prohibition on State regulation of CMRS rates also includes the rates CMRS providers pay for carrier-to-carrier interconnection.[16]

CTIA's proposed interpretation of footnote 21 suggests that the Eighth Circuit has rewritten Section 332's clear language. The Eighth Circuit obviously did not do so. Congress's Omnibus Budget Reconciliation Act of 1993, which established Section 332, did not alter the jurisdictional requirement leaving to the States the power to set the LECs' interconnection rates. Section 332(c)(3) provides, in pertinent part, that "no State or local government shall have any authority to regulate the . . . rates charged by any commercial mobile service . . . ."[17] "[R]ates charged by" CMRS providers are not the same as LECs' rates assessed to CMRS providers for interconnection.

As CTIA acknowledges, the Commission has recognized this distinction in past decisions and stated that Section 332 does not affect the States' authority over interconnection rates.[18] In connection with the Louisiana Public Service Commission's

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[15] *Id. (emphasis added).*
[16] CTIA at 4 (emphasis added).
[17] 47 U.S.C. Section 332(c)(3)(A) (emphasis added).
[18] CTIA at 4.

petition to retain State authority over CMRS, the Commission found that Louisiana's regulation of LECs' interconnection rates to CMRS providers "does not appear to be circumscribed in any way by Section 332(c)(3)."[19] Similarly, in its earlier Order implementing Section 332, the Commission stated, "[W]e will not preempt state regulation of LEC intrastate interconnection rates applicable to cellular carriers at this time."[20] In considering whether to preempt the States, the Commission explicitly recognized that the States still had authority over interconnection rates. Indeed, if Section 332 had removed State authority, there would have been nothing for the Commission to preempt.

Just two months before enactment of the 1996 Act, the Commission "emphasize[d] [its] recognition of the states' legitimate interest in interconnection issues...."[21] In that decision, the Commission considered a number of potential alternatives, including establishing voluntary interconnection guidelines for States to follow or preempting State regulation of interconnection rates based on inseverability or other theories, again recognizing that the States retain authority under Section 332 unless and until the Commission finds that it can and should preempt it.[22] In the *Interconnection Order* implementing the local interconnection provisions of the 1996 Act, the Commission "acknowledge[d] that Section 332 in tandem with Section 201 is a basis for jurisdiction over LEC-CMRS interconnection; we simply decline to define the precise extent of that jurisdiction at this time."[23] If and when it does so, the Commission must continue to find that the States, not the FCC, have authority over interconnection rates.

Congress's intent in Section 332(c)(3) was to preempt rates charged by CMRS providers to their end user subscribers, not to preempt in the area of interconnection. This intent is shown by Congress's permission for States to petition for authority to regulate CMRS rates if "market conditions with respect to [CMRS] services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory."[24] Congress preempted State regulation of rates CMRS providers charge their end user subscribers, in favor of market forces where possible. Congress did not deprive the States of jurisdiction over intrastate rates for interconnection and transport and termination between LECs and CMRS providers.

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[19] *Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana*, 10 FCC Rcd 7898, 7998 (1995).

[20] *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, para. 231 (1994).

[21] *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, *Notice of Proposed Rulemaking*, 11 FCC Rcd 5020, para. 114 (1996).

[22] *Id.* at paras. 108, 112-113.

[23] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, para. 1023 (1996).

[24] 47 U.S.C. Section 332(c)(3)(A)(i) (emphasis added). *See* Omnibus Budget Reconciliation Act of 1993, Conference Report of the Committee on the Budget, House Of Representatives, To Accompany H.R. 2264, August 4, 1993, Conference Agreement, p. 493.

Interconnection between LECs and CMRS providers is covered by Section 332(c)(1)(B), not 332(c)(3). Section 332(c)(1)(B) simply states that "the Commission shall order a common carrier to establish physical connections with [CMRS providers] pursuant to the provisions of section 201 of this Act" (emphasis added). This section provides authority to order physical connections, nothing more. By limiting the FCC's interconnection authority to the authority to require physical connections, Congress did not provide the FCC the authority to establish rates, terms, and conditions of interconnection. It is not unusual for Congress to grant the FCC the authority to order specific physical acts, while leaving the specific details, including prices, terms, and conditions, up to the States. For instance, Congress gave the FCC the authority to order the physical unbundling of network elements, but left the States with the authority to set the rates for the network elements.[25] This approach is particularly appropriate for CMRS-LEC interconnection, considering the local nature of the interchanged traffic.

Section 201 has never been thought to trump State authority under Section 2(b). Nor does it, together with §332(c)(3), now trump the interconnection agreement procedures of Sections 251 and 252. Section 332(c)(3)'s provision preempting State regulation of the entry of CMRS providers,[26] and Section 332(c)(1)(B)'s provision conferring a general right to interconnection,[27] do not confer power on the Commission to preempt State regulation of LECs' intrastate interconnection rates. Section 332(c)(1)(B) explicitly states that it "shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act" (emphasis added). Thus, to the extent that prior law allowed States the power to regulate interconnection rates, Section 332(c)(1)(B) changes nothing.

If the Commission could regulate the rates charged to CMRS providers by any entity simply by virtue of Section 332's language regarding rates charged by CMRS providers or its separate language regarding entry and interconnection, the Commission's jurisdiction would expand dramatically and the States' jurisdiction would shrivel. If Congress intended this radical change in federal-State relations, it would have needed to provide explicitly for that result. Because it did not do so, Section 332 must be given its plain meaning, and the provision must be deemed irrelevant to the question of jurisdiction over rates for interconnection and transport and termination. Section 2(b) continues to reserve pricing authority to the States.

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[25] The Eighth Circuit vacated the Commission's pricing rules, including their application to unbundled network elements, but upheld many of the Commission's physical unbundling rules. *Eighth Circuit Interconnection Opinion* at 793-800, 808-817.

[26] 47 U.S.C. Section 332(c)(3).

[27] 47 U.S.C. Section 332(c)(1)(B).

The Specific, Plain Language Of Sections 251 And 252 Of The 1996 Act Governs Regardless Of How The Earlier 1993 Budget Act Is Interpreted

As discussed, the proper interpretation of the Omnibus Budget Reconciliation Act of 1993's provisions in Section 332 leaves the States with exclusive authority over LEC-CMRS interconnection prices. The proper interpretation of Section 332 is consistent with the Telecommunications Act of 1996. But even if the Commission were to interpret Section 332 to provide the FCC with some authority over interconnection prices, that statutory interpretation would have to give way to the provisions of the 1996 Act. Certainly, in the area of interconnection pricing, the 1996 Act is far more specific than any reading of the 1993 Budget Act. It is a well-established rule of statutory interpretation that the later in time and more specific provision governs over the earlier and more general.[28]

The plain language of the 1996 Act authorizes the States to regulate interconnection prices. The Eighth Circuit described this plain language as follows:

> Indeed, subsection 252(c)(2) requires a state commission to 'establish any rates for interconnection, services, or network elements according to subsection (d) of this section.' Meanwhile, subsection 252(d), entitled 'Pricing standards,' lists the requirements that the state commissions must meet in making their determinations of the appropriate rates for interconnection, unbundled access, resale, and transport and termination of traffic. 47 U.S.C.A. § 252(d)(1)-(3). These statutory provisions undeniably authorize the state commissions to determine the prices an incumbent LEC may charge for fulfilling its duties under the Act.[29]

In spite of this plain language providing States authority, CTIA invites the FCC to assert in the LEC-CMRS context exclusive jurisdiction to apply the Section 251(b)(5) LEC obligation to provide reciprocal compensation. This result would be a rather remarkable carve out of authority that is not contemplated anywhere in Section 251 or any other provisions of the 1996 Act. In fact, CTIA's proposal would read Section 252 out of the Act for LEC-CMRS interconnection. Accordingly, the plain language of the 1996 Act compels the Commission to deny CTIA's request that the Commission declare it has exclusive jurisdiction over LEC-CMRS interconnection including pricing.

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[28] *See, e.g., Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 228-29 (1957).

[29] *Eighth Circuit Interconnection Opinion* at 794 (emphasis in original).

The Commission Does Not Have The Authority To Review CMRS-LEC Interconnection Agreements And Resolve Disputes

CTIA flounders to find support for its argument that the FCC will be the sole arbiter of CMRS-LEC interconnection agreements.[30] CTIA mentions the Commission's long-existing complaint authority and ability to provide declaratory rulings, apparently recognizing that in the 1996 Act Congress did not give the FCC authority to review interconnection agreements negotiated under Sections 251 and 252. If Congress had wanted the FCC to perform an enforcement role, Congress would have established it.

CTIA's half-hearted reliance on the Section 208 complaint process as a means for the Commission to resolve CMRS-LEC interconnection disputes is misplaced.[31] The Eighth Circuit made a blanket finding that "[t]he language and design of the Act indicate that the FCC's authority under section 208 does not enable the Commission to review state commission determinations or to enforce the terms of interconnection agreements under the Act."[32] The Court did not exclude CMRS interconnection from this proscription on the FCC's use of the Section 208 complaint process.

Similarly, the Court's discussion of the review and enforcement of interconnection agreements is applicable to all interconnection agreements. It is not limited to any type of carrier, but includes all wireline and wireless carriers. The Court "conclude[s] that the language and structure of the Act combined with the operation of section 2(b) indicate that the provision of federal district court review contained in subsection 252(e)(6) is the exclusive means of obtaining review of state commission determinations under the Act and that state commissions are vested with the power to enforce the terms of the agreements they approve."[33] Accordingly, CTIA's opinion that "the Commission will be the sole arbiter of CMRS-LEC interconnection agreements"[34] must be rejected.

The actions of CMRS providers themselves show that the Commission must reject CTIA's request. CMRS providers throughout the country have relied on State approval of CMRS-LEC interconnection agreements, as well as on State arbitrations under the 1996 Act. CMRS providers cannot seek these advantages under the Act and then claim that the State process does not really apply.

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[30] CTIA at 5.
[31] *Id.*
[32] *Eighth Circuit Interconnection Opinion* at 803.
[33] *Id.* at 804.
[34] CTIA at 5.

The Commission Should Not Disrupt The Currently Successful Negotiation Process

In its September 30, 1997 Public Notice, the Commission stated, "In light of the Eighth Circuit's decision, the Commission is currently evaluating whether there is a need for, and, if so, the extent of, further action regarding CMRS-LEC interconnection."[35] Any Commission attempt to assert exclusive jurisdiction, as CTIA urges, or to change the CMRS-LEC interconnection rules would disrupt the currently successful negotiation process. SWBT, Pacific Bell, and Nevada Bell in their combined seven States have over 50 CMRS-LEC interconnection agreements in place, only one of which was arbitrated. A rulemaking proceeding to consider asserting exclusive jurisdiction or changing interconnection rules would disrupt this successful process by giving CMRS providers the incentive to (1) break off negotiations to wait for new rules or (2) demand renegotiation of existing arrangements, most of which have already been approved by the relevant State commission, once the FCC revised the rules. There are sufficient avenues to deal with special issues, such as Docket CCB/CPD 97-24 concerning paging-LEC interconnection rules, without starting a general proceeding that would create disruption and harm the public.[36]

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[35] *Public Notice*, FCC 97-344, *Summary Of Currently Effective Commission Rules For Interconnection Requests By Providers Of Commercial Mobile Radio Services, p. 3.*

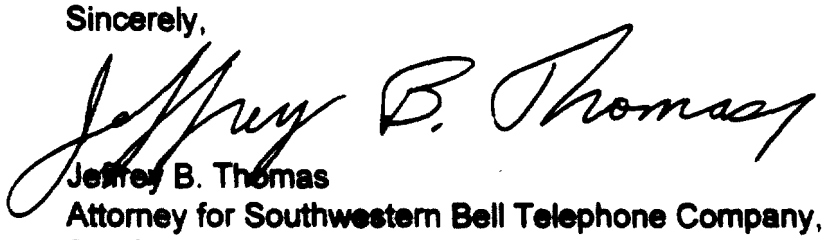
[36] Creating additional rules applicable only to CMRS also would skew competition between CMRS and landline services, and the differences in rules between CMRS and landline services would create uneconomic arbitrage opportunities.

Conclusion

The Eighth Circuit's decision to vacate entirely many of the Commission's interconnection pricing rules, including the rules directly aimed at setting rates for transport and termination for CMRS as well as for wireline providers, shows that the Court correctly interpreted Section 332 as continuing the Section 2(b) limitations on the Commission's authority. Both the Eighth Circuit's Opinion and the plain meaning of Section 332 bar any claim of exclusive FCC authority over CMRS-LEC interconnection.

For all the above reasons, the Commission should deny CTIA's request for a declaration that the FCC has exclusive authority over CMRS-LEC interconnection agreements. The Commission should allow the States to review CMRS-LEC interconnection agreements and to resolve disputes in the manner Congress prescribed.

Sincerely,



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The Honorable Michael K. Powell
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